UNITED STATES
v.
RUSSELL AND LENA JOURNIGAN

IBLA 80-930 Decided November 10, 1981

Appeal from decision of Administrative Law Judge Dean F. Ratzman declaring the Tucki, Tucki No. 2, and Tucki No. 3 lode mining claims null and void. CA-4995.

Affirmed.

1. Administrative Procedure: Administrative Review -- Mining Claims: Contests

Where facts and law are properly set forth and applied in Administrative Law Judge's decision holding lode mining claims null and void for lack of discovery of a valuable mineral deposit, and appellants have made no showing that the decision is in error, the decision may be adopted by the Board of Land Appeals and affirmed.

APPEARANCES: W. Scott Donaldson, Esq., Phoenix, Arizona, for appellant; James E. Turner, Esq., Office of the Regional Solicitor, Sacramento, California.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Russell and Lena Journigan have appealed from an August 20, 1980, decision of Administrative Law Judge Dean F. Ratzman declaring the Tucki, Tucki No. 2, and Tucki No. 3 lode mining claims null and void for lack of discovery of valuable minerals on the claims. The claims are located in the S 1/2 sec. 15 of protracted T. 17 S., R. 45 E., Mount Diablo meridian, within the Death Valley National Monument, Inyo County, California.

The California State Office, Bureau of Land Management (BLM), initiated contest CA-4995 April 12, 1978, on behalf of the National Park Service charging that there are not presently disclosed within the boundaries of the mining claims minerals of a variety subject to the mining laws, sufficient in quantity, quality, and value to constitute a discovery.

After the contestees filed a timely answer a hearing was held before Judge Ratzman December 20, 1979, and February 14, 1980, in Sacramento, California. The Judge concluded from the evidence presented at the hearing that, at most, appellants had shown that further exploration work was warranted on the claims and that such further exploration would not support a discovery. Therefore, he declared the three claims null and void.

[1] We have thoroughly reviewed the record of this case and the arguments advanced by the parties. The Judge's decision sets out a full summary of the testimony, the relevant evidence, and applicable law. We agree with the Judge's findings and conclusions and adopt his decision as the decision of the Board. A copy of the Judge's decision is attached as Appendix A.

Appellants argue that the Judge's decision should be overturned and the Tucki mining claims declared valid essentially because the Government did not make a prima facie case of invalidity and that appellants proved the validity of the claims by a preponderance of the evidence. They contend that Judge Ratzman's decision was based on some standard other than "the prudent man" test and that the Government's evidence was neither reliable nor probative.

Our review of the record shows that Judge Ratzman carefully weighed the evidence presented and properly concluded that appellant's evidence did not sufficiently overcome the Government's prima facie case establishing that there was no discovery of a valuable mineral on the claims. Appellant has not demonstrated any specific error in the Judge's findings. Thus, we affirm those findings.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

August 20, 1980

United States of America, : Contest No. CA-4995
Contestant : Involving the TUCKI; : TUCKI No. 2; and TUCKI
v. : No. 3 Lode Mining Claims
: situated in S-1/2 Sec. 15
Russell Journigan : of protracted T. 17 S.,
Lena Journigan, : R. 45 E., M.D.M., Inyo
Contestees : County, California

DECISION

Appearances: James E. Turner, Attorney,
Office of the Solicitor
Sacramento, California for the
Contestant

Carl Dresselhaus, Attorney at
Law, Los Angeles, California
for the Contestees

Before: Administrative Law Judge Ratzman

This is an action initiated by the Bureau of Land Management on behalf of the National Park Service, United States Department of the Interior, pursuant to the departmental regulations, 43 CFR Part 4. On April 12, 1978, a complaint was issued (subsequently amended on April 17, 1978) which alleged, in part:

> There are not presently disclosed within the boundaries of the mining claim minerals of a variety subject to the mining laws, sufficient in quantity, quality, and value to constitute a discovery.

On May 25, 1978, Russell and Lena Journigan filed an answer requesting a hearing. No answer has been filed by Paul and Charlotte Barnett who were named as contestees in the complaint. Hearing sessions were held on December 20, 1979 and February 14, 1980 in Sacramento, California. At the hearing Mr. Dresselhaus was recognized as the legal representative for the Barnetts. However, because they did not file an answer they have no standing in this proceeding.

The Tucki mining claims are situated in the Death Valley National Monument, Inyo County, California. The lands within the monument were withdrawn from mineral entry on September 28, 1976 [16 U.S.C. Sec. 1901, et seq. (1976)].
Robert T. Mitcham, Chief, Division of Mining, Death Valley National Monument and an employee of the National Park Service, was called to testify. He has a B.S. degree in mining engineering and 40 years of experience in his profession. He has held management positions in lead, tungston, gold, silver and copper mines. He has examined the Tucki mining claims at least a dozen times. Mining activities began on the claims in 1974. Tr. 12. The gold recovery process utilized at one time on the claims used a crusher which reduced mine tailings so they could be leached in vats of cyanide solutions. Tr. 13. Samples were taken by Mitcham from the top and bottom of a truck bin. Tr. 13. These grab samples were sent to Jacob's Assay Office for analysis. The assay firm reported .03 Troy ounces of gold per ton and .35 Troy ounces of silver per ton from the material obtained from the top. Tr. 15. A dust sample from the bottom of the bin produced a gold value of .22 Troy ounces per ton and a silver value of .45 Troy ounces per ton. A sample from fines or dust would be expected to show higher values. Tr. 15. These were insignificant mineral values according to Mr. Mitcham.

Lewis S. Zentner, Chief of the Division of Mining and Minerals for the Western Region of the National Park Service, a qualified mining engineer, provided information relating to the location of the subject claims. Tr. 32. The Tucki claims are 12 miles from the Emigrant Canyon Ranger Station via a dirt road. Mr. Zentner's first visit to the claims was on March 9, 1974. He found quartzite, slates and conglomerates on the contested properties. A winze is on the Tucki No. 3 and another winze is on the Tucki lode claim (Exhibit 4). Most of the mine workings are on the latter claim. Tr. 35. He gave a detailed description of the shafts, adits, stoped areas and drifts. While within the mine, Mr. Zentner did not see a continuous vein. Tr. 45.

He believes the quartzite in the underground workings fractured and allowed solutions of minerals to deposit within the quartzite. Three samples were taken in 1974 from the inclined shaft on the Tucki lode claim. Tr. 49, Exhibit 6. Sample T-1, which showed .03 ounces of gold per ton, was a grab sample taken from a chute on the extreme eastern end of a 170 foot drift. Exhibits 6 & 7, Tr. 49. Sample T-2, which assayed at .04 ounces of gold per ton, was taken from the west face of the winze in the inclined shaft. Sample T-3, which was found to contain only .01 ounces of gold per ton, was cut across the face of the west end of the drift at the lowest level of the inclined shaft. Exhibits 6 & 7, Tr. 50. Taking these assay results into account, Mr. Zentner believes a mining operation could not be sustained. Tr. 53. In his 28 years as a mining engineer he worked almost three years in underground mines as a miner, shift boss and foreman. Exhibit 2.

During his most recent examination, in December, 1979, Mr. Zentner found that most of the mining equipment had been removed or stored. Tr. 60. Other samples were taken in January, 1976 from the underground workings in the inclined shaft. Exhibit 6, Tr. 61. Sample T-6-1 was taken from the west drift across a three foot zone. Tr. 67. An assay indicated that this sample contained 1.35 ounces of gold per ton. Exhibit 13. The report on Sample T-6-2 listed .36 ounces of gold per ton. This sample was taken from an inch wide vein that was 12 feet east of sample point T-6-1. Sample T-6-3, a grab sample from the same point where sample T-1 was taken, contained .18 ounces of gold per ton. Exhibit 13. More samples were taken in December, 1979 from the back of a stope in the inclined shaft at the 170 foot level. Tr. 69. They were taken across a one foot vein eight feet above sample point T-6-1. Tr. 69. Sample TA-1 contained .46 ounces of gold per ton and sample TA-2 showed 1.34 ounces of gold per ton, according to assay reports. Tr. 70.

After examining and taking samples from the Tucki claim Mr. Zentner expressed the opinion that a prudent man would not be justified in expending his time and means on that claim with a reasonable prospect of developing a paying mine. Tr. 71. He believes the residual values left in the mine could not have been profitably extracted in 1976, explaining that the observable workings indicate that material which could yield a profit was removed in earlier operations, and material containing lower values was passed by. Tr. 71. Likewise, the Tucki No. 2 and Tucki No. 3 claims lack a valid discovery, since he found no mineralization worth extracting. Tr. 73. During the 1974 and 1976 mineral examinations the mining claimants accompanied Mr. Zentner. No discovery points were shown to Mr. Zentner by the claimants at that time.

On cross-examination, Mr. Zentner admitted he did not ask Mr. Journigan to point out his discovery points on Tucki Nos. 2 and 3. Tr. 76. No samples were taken from either of those claims because indications of a vein are lacking. Tr. 77. The most promising area on the Tucki Lode claim is at sample point T-6-1. This would be a good place to begin exploration. Tr. 78. However, a fault nearby may cut off any possible mineral deposits. The Tucki claim had been selectively mined and all the visible ore removed. Tr. 81. The miners stayed on the ore. Before the Tucki mine could be made safe, it would cost $25,000 to rehabilitate the shaft. Tr. 87. A sufficient tonnage of ore must be found in order to justify the expenditure of such an amount. Tr. 93. Most of the samples with low and high values should be shown to extend 50 feet, not eight. The type of mining involved is very expensive. Tr. 93.

Mr. Zentner's observations of the underground workings on the Tucki claim led him to believe that most were excavated before World War II. Tr. 98. The values in the vein are erratic and they may pinch out to nothing. The one place that warrants exploration is the 170 foot level. Tr. 97. It is not the type of deposit that he would recommend for diamond drilling exploration. Tr. 105. The cost of driving a 335 foot drift in another mine in 1975 was about $50 per foot. Tr. 89, 90.

Russell Journigan, one of the mining claimants, testified the Tucki mine has been in his family for 50 years. Tr. 109. He was out on that mine initially in 1932. The claims were being developed in 1933. Four miners actively mined the property from 1940 to 1942. Approximately 4,000 tons of ore were processed. About 506 ounces of gold were recovered in 1941. Tr. 111. Mr. Journigan put in an extraction plant near the mine in 1974 but nothing was processed that year. Tr. 112. He delivered his portion of the samples taken by Mr. Zentner in March, 1974 to the Eisenhauer Laboratory for analysis. Tr. 115. The following gold values were reported:

Description	Gold Per Ton
Bottom of Big Dump	.28 ounces
300 Level	.17 ounces
Top of Main Dump	.30 ounces
307' West Wall	.09 ounces
305' West Wall	.14 ounces
Top of Big Dump	.40 ounces
310' East Wall	.41 ounces
Middle of Big Dump	.29 ounces

In comparison to the gold values reported by Jacob's Assay, the Eisenhauer assays (Exhibit K) were higher.

During the period when Mr. Journigan actively operated the claims, he processed 3,000 tons of material through his extraction plant. Tr. 123. The plant utilized a carbon adsorption process to extract gold from the ore. Tr. 113. On September 28, 1976, he was not operating the Tucki mine because he lacked financing to begin underground operations. Tr. 123. He cleaned out the adits in 1976 and removed 50 tons of material. Mr. Journigan's gold pannings and observations indicated that there was sufficient gold to justify a prudent man in the expenditure of time and effort with the expectation of developing a paying mine. Tr. 126. In addition, the Eisenhauer Laboratories assay results from the bottom of the inclined shaft on the Tucki mine would justify further sinking directed to the development of further gold-bearing material. Tr. 128. When asked about the Tucki No. 2 and Tucki No. 3 claims and their validity as of September 28, 1976, Mr. Journigan responded:

> I would say that the mapping that we now have, it would not be a prudent man to develop the Tucki No. 2 and the No. 3. The reason that we claim those was in hopes that the vein would extend, which it does in some of the areas, but, at the price of $116.00 an ounce at the time of closure, I would say, no. Tr. 133.

On the other hand, Mr. Journigan is encouraged by the values of gold and silver he has found, to develop the Tucki claim. Tr. 134.

Mr. Floyd Wilmoth, an instructor of mining, geology and climatology at Sierra College in Rocklin, California, testified on behalf of the mining claimants. He is a consulting geologist and a mining engineer, and has worked in California gold mines. According to Mr. Wilmoth, the Tucki mine is not a simple gold mine. He testified:

> It (the Tucki mine) is a series of mineralized fracture zones that extend at a rake angle along the general dip of the fractures, the dip plane of the fracture zone, and there is no, at least in the areas that I was, there's no distinct vein. It is very disseminated, all broken up. It is what I call a brecciated hydrothermal zone. Tr. 169.

Mr. Wilmoth examined the Tucki mine from January 27, 1980 through January 31, 1980, in the company of Mr. Journigan. Tr. 170. He restricted his examination to the Tucki claim. Tr. 166. He took mine samples from the 177 foot level and from the bottom of the shaft. Tr. 174, Exhibit 5. Since he has been teaching fire assaying courses for the last 30 years, he is quite familiar with the appropriate techniques. Tr. 177. Although the mineralized areas are broken up in the Tucki mines, thus making it difficult to sample, Mr. Wilmoth tried to take uniform channel samples. Tr. 188. An example of the erratic gold values found in the Tucki mine is sample point No. 3, Exhibit 5. At this sample point Mr. Wilmoth recovered 1.18 ounces of gold per ton while his sample taken later one foot away produced only .10 ounces of gold per ton. Tr. 192. At sample point No. 4, Mr. Wilmoth's samples gave a result of .53 ounces per ton (gold) while a resampling of Mr. Mitcham's sample point produced .75 ounces of gold per ton. Tr. 192, 193.

A rough estimate by Mr. Wilmoth of the reserves at the 177 foot level of the Tucki mine is 100 tons of valuable ore. Exhibit V. Mr. Wilmoth believes that the ore was left in the mine but the miners intended to return to remove it "as it was economic." Tr. 197. Applying an arithmetical average for all the samples taken from this ore deposit, Wilmoth calculated .59 ounces of gold per ton. Based on the September 28, 1976 gold price, the ore would be worth $68.44 per ton. Tr. 197. Mr. Wilmoth estimated it would cost $7.50 a ton to mine and deliver it to the surface. Tr. 198. He acknowledged that he took no other samples as a basis for his estimate of ore reserves.

A cost estimate as to the expense of excavating a 300 foot long access adit to intersect an existing shaft in the Tucki mine was $10,591 which included the labor cost of a tractor driver at $6.00 per hour. Tr. 202, Exhibit X. According to Mr. Wilmoth, a front end bucket loader could excavate the adit. Mr. Wilmoth is a partner in the Wilmoth Construction Company which has been in business since 1953. Tr. 203. In Mr. Wilmoth's opinion, he would expend money and effort in developing the Tucki claim. Tr. 207. He believes he could recover a lot of money by selectively mining, utilizing the "glory hole" method.

Upon further questioning, Mr. Wilmoth stated he began working in gold mines in California in 1933. Tr. 228. It is his view that in the Tucki mine a two foot mining width is all that is necessary in order to mine the ore. Tr. 230. He recommends using 40 foot long sectional drills to place explosives, working from the sides of the pillars. Tr. 231. A mining cost analysis (Exhibit Y) stated that an

additional 175 tons of ore at $38.50 a ton value must be mined to recoup the cost of excavating the long adit at the 177 foot level of the mine. Tr. 233. Such ore was visually observed although he did not take samples at other locations. Mr. Wilmoth believes there are other deposits of ore besides the pillar. Tr. 235. In his opinion, a reasonable mine owner would do development work in the area where Stephen Zentner's samples indicate 1.34 ounces of gold per ton. Tr. 236. Nevertheless, he would recommend extensive sampling (150 to 200 assays) prior to actual mining. Tr. 238.

Robert Mitcham was recalled as a witness and stated that he observed Mr. Wilmoth take samples. Mr. Zentner took samples near Mr. Wilmoth's sample points. Tr. 240. In the Government's testing, Sample No. 1 was .16 ounces of gold per ton compared with Wilmoth's .20 ounces per ton. Tr. 247. For Sample No. 2, Wilmoth recovered .14 ounces compared to .19 ounces by Mr. Zentner. At sample No. 3 on the down dip side of the ore bed, Wilmoth recovered .64 ounces, Mitcham's was about the same, and Zenter recovered only .08 ounces. An average of two samples taken at sample No. 4 by Wilmoth is .64 while Zentner's contained .67 ounces. At sample No. 7, Mr. Zentner's samples were listed at 1.34 ounces compared to Wilmoth's .59 ounces. Sample No. 5, Wilmoth's gold recoveries were 1.36 ounces while the NPS assay was .14 ounces. It is obvious that there are major differences at about one-half of the points selected for testing. Tr. 252.

Mr. Mitcham criticized the Wilmoth methods of estimating the quantity of ore in the pillar. In Mr. Mitcham's opinion there are two different structures, which would yield approximately 25 tons of material. Tr. 253, 257. Furthermore, he does not believe an average value can be assigned to the pillars because, ". . . you are getting into some values that are too low to mine, like in the first opening I described, G-1, 2 and 3, samples Nos. G-1, 2, and 3. They wouldn't even be in the picture. You've got to have something to extend from one side of the pillar * * * to another opening somewhere." Tr. 253. In his view the pillar described is too low in grade and too thin to develop. There are discrepancies between the Government's map of the underground workings (Exhibit 13) and Mr. Wilmoth's maps (Exhibits 5 and 6). A block in Wilmoth's Unit No. 1 has been mined out. Tr. 255. Based on his examination, Mr. Mitcham is of the opinion that a prudent man would not have been justified in developing the Tucki claims on September 28, 1976. Tr. 260. He believes the claim is an "empty bucket," with exhausted stopes.

On cross-examination, Mr. Mitcham asserted that small mines such as the Tucki would be mined until the gold values reached a low of an ounce or half an ounce and then they would be shut down. Tr. 265.

Herman J. Lyttge, Chief of the Branch of Records and Data Management for the California State Office of the U.S. Bureau of Land Management, stated he is responsible for keeping all land records that originate in California. Tr. 279. After a search of the official BLM files, Mr. Lyttge did not find on file a Notice of Intention to Hold the Tucki claims. Tr. 280. Also, there were no affidavits or evidence of annual assessment work. Tr. 281. None of these documents were ever filed prior to December 31, 1979.

Applicable Law

Under the mining laws of the United States [30 U.S.C. Sec. 22, et seq. (1976)], the discovery of a valuable mineral deposit is essential if a claim is to be held valid. There must be found within the limits of a lode mining claim a vein or lode of quartz, or other rock in place, bearing mineral of such quantity and quality that a prudent person would expend time and means with a reasonable prospect of success in developing a valuable mine. Converse v. Udall, 399 F.2d 616, 621 (9th Cir. 1968) cert. denied, 393 U.S. 1025 (1969); Barton v. Morton, 498 F.2d 288 (9th Cir.) cert. denied, 419 U.S. 1021 (1974).

In a mining contest the contestant assumes the burden of going forward with sufficient evidence to establish a prima facie case of invalidity. When the contestant has established a prima facie case the burden shifts to the claimant to show by a preponderance of the evidence that his claim is valid. United States v. Zweifel, 508 F.2d 1150, 1157 (10th Cir. 1975); Foster v. Seaton, 271 F.2d 836, 838 (D.C. Cir. 1959); United States v. Alex Bechthold, 25 IBLA 77, 82 (1976).

A prima facie case that a discovery of a valuable mineral deposit is lacking is established when a Government mineral examiner gives his expert opinion that he examined a claim and found insufficient values to support a finding of discovery. United States v. Alex Bechthold, supra; United States v. Fisher, 37 IBLA 80 (1978). The function of the Government mineral examiner is to verify, if possible, the existence of a discovery by examining the claim and by extracting mineral samples from accessible areas of exposed mineralization at which the claimant alleges a discovery to have been made. United States v. Arizona Mining and Refining Co. Inc., 27 IBLA 99, 107 (1976). He is under no duty

to undertake discovery work or to explore beyond the current workings of a claim. United States v. Timm, 36 IBLA 316 (1978); United States v. Florence J. Mattox, 36 IBLA 171 (1978).

Where a mining claim occupies land which subsequently is withdrawn from the operation of the mining laws the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as of the date of the hearing. If at the date of the withdrawal the claim was not supported by the qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal. Thus the claim could not thereafter become valid even though the value of the deposit increased due to a change in the market. United States v. Rodgers, 32 IBLA 77, 84 (1977); United States v. Garner, 30 IBLA 42, 66 (1977). Before a finding of discovery of a valuable mineral deposit within a mining claim is warranted, it must be shown as a present fact that the claim is valuable for minerals. Evidence of past profitable mining is not proof the claims are presently profitable. United States v. Maley, et al., 29 IBLA 201 (1977); United States v. Bechthold, 25 IBLA 77 (1976). See also, United States v. Clare Williamson, et al., 45 IBLA 264 (1980).

Occasional high samples would not be conclusive evidence of a valid discovery. It is necessary to consider other factors such as the extent of the mineral deposits, the number of samples assayed which show only a trace of mineral value, and the nature of the samples which yielded the high values. To be meaningful, the sample relied upon must be representative of the mineral deposit, not selective showings of the best mineralization. United States v. Alex Bechthold, 25 IBLA 77, 88 (1976). The mere showing of disconnected pods of mineral concentration, even of high values, does not satisfy the test. United States v. Robert Chambers, 47 IBLA 102, 107 (1980); United States v. Arizona Mining and Refining Co. Inc., 27 IBLA 99 (1976).

Evidence of mineralization which might warrant further exploration work within a claim rather than development of a mine is not sufficient to constitute a discovery of a valuable mineral deposit. Converse v. Udall, 329 F.2d 616 (9th Cir. 1968), cert. denied, 393 U.S. 1025 (1969); Henault Mining Company v. Tysk, 419 F.2d 766 (9th Cir. 1969); cert. denied, 398 U.S. 950 (1970).

Determination

The Government, though the testimony of its two expert witnesses, has established a prima facie case that there are no mineral deposits exposed on any of the contested claims which would justify a prudent person in the expenditure of his labor and means with a reasonable prospect of developing a valuable mine. There were no visible mineral deposits on the Tucki No. 2 or Tucki No. 3. Most of the mine workings were restricted to the Tucki claim. There was no continuous vein of ore found in the underground workings. They estimate that only a small volume of material remains at locations where relatively high samples were taken. In Mr. Zentner's opinion most of the valuable ore was mined out before World War II. Since the mine needs extensive repair, and heavy expenditures for access and safety, a sufficient tonnage of ore must be found before he would recommend development of the claim.

The mining claimant has failed to overcome the Government's prima facie case. Granted that some of the assay results submitted by the mining claimant indicate higher gold values than those from samples taken by the Government mineral examiners, it has not been shown there is a sufficient quantity of ore within the Tucki claims. Mr. Journigan was not actively mining at the date of withdrawal of lands within boundaries of the Monument. He acknowledged that the Tucki No. 2 and Tucki No. 3 could not have been profitably mined in 1976. However, he believes that the values existing in the Tucki mine would encourage further exploration.

Mr. Wilmoth agrees that there is no distinct vein of ore in the Tucki mine. From his observations and sampling he concluded there are erratic mineral values in the underground workings on the Tucki claim. In some instances the assay results for his samples taken from the Government sample points were different than those of the Government mineral examiners. Mr. Wilmoth applied an arithmetical average for the gold values found on the Tucki claim rather than a weighted one. His recommendation of two foot mining width must be regarded as questionable. It is noted that the Wilmoth mining report states that additional ore reserves must be found before even the cost of an adit to the underground workings can be recouped. He also recommended that a large number of samples be taken before a mining operation is commenced. He referred to this proposed sampling program as development, but I conclude that it must be treated as exploration work. He relies heavily upon the material in the pillar, but he performed his tape and compass work unaided, at a time when he was not feeling well. The contestant's 25 ton estimate for material in the pillar is based upon meas-

urement and graphing work performed by two engineers, a cartographer and several other assistants. The rulings of the Board of Land Appeals that mineralization which would justify further exploration would not support a discovery are applicable in this contest.

Accordingly, the Tucki, Tucki No. 2 and Tucki No 3 lode mining claims are declared null and void. In view of this holding based upon the lack of a discovery of valuable minerals in the fall of 1976, I will make no determination as to the effect of the failure of the contestees to file formal notices of intention to hold the contested claims (or affidavits or evidence concerning annual assessment work) in 1978 and 1979.

Dean F. Ratzman
Administrative Law Judge

Appeal Information

An appeal from this decision may be taken to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations in 43 CFR Part 4 (revised as of October, 1978). Special rules applicable to public land hearings and appeals are contained in Subpart E. If an appeal is taken, the notice of appeal must be filed in this office (not with the Board) in order to facilitate transmittal of the case file to the Board. If the procedures set forth in the regulations are not followed, an appeal is subject to dismissal. The adverse party to be served with a copy of the notice of appeal and other documents is the attorney for United States Department of the Interior whose name and address appear below. Rules that became effective February 25, 1980 state that, the Associate Solicitor of the Division of Energy and Resources must be served with a copy of the notice of appeal and any statement of reasons, written arguments, or briefs. (Address: Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240.

Enclosure: Additional information concerning appeals.